

(2014) 04 AHC CK 0124
In the Allahabad High Court
Case No : Writ-C No. 23214 of 2014

Rajesh Kumar Srivastava

APPELLANT

Vs

Anil Kumar Srivastava

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 34

Citation : (2014) 123 RD 721

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : N.A. Khan, Advocate for the Appellant; Anil Kumar Aditya and Manoj Kumar Yadav, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri N.A. Khan for the petitioners and Sri Anil Kumar Aditya for the contesting respondents. The writ petition has been filed against the order of Commissioner dated 10.3.2014 passed in the revision arising out of proceeding u/s 34 of U.P. Land Revenue, Act, 1901 (hereinafter referred to as "the Act").

2. Rajesh Kumar, petitioner, and the respondents (second set) filed an application u/s 34 of the Act for mutation of their names over the land recorded in the name of Mata Prasad. It has been stated in the application that Mata Prasad left behind his only son Kailash and after the death of Kailash the petitioner, his brothers and their mother inherited the property in dispute. It is alleged that when the contesting respondents put appearance in the application and filed objection, then the application was got dismissed as not pressed by order dated 28.4.2011. Thereafter, behind the back of the contesting respondents another application u/s 34 of the Act was filed which was allowed ex parte by order dated 29.4.2011. On coming to know about the said order, the contesting respondents filed an application for recall of the order, which was dismissed by the order dated 17.8.2011. The contesting respondents challenged the aforesaid order in

revision. The revision was heard by Additional Commissioner, who by order dated 12.4.2012 allowed the revision and set aside the orders dated 29.4.2011 and 17.8.2011 and remanded the matter to Tahsildar for deciding the mutation application afresh after giving opportunity to the parties to lead the evidence. The petitioner challenged the order dated 12.4.2012 in revision before the Board of Revenue, which was dismissed by order dated 26.9.2012. Thereafter the petitioner filed Writ B No. 5808 of 2012, which was also dismissed by this Court by order dated 6.11.2012. After dismissal of the writ petition the matter was taken up by Tahsildar and it is alleged that the evidence on behalf of the petitioner was completed on 14.3.2013. Thereafter 24.3.2013 was the date fixed for evidence of the contesting respondents. On 24.3.2013 the case was adjourned and a general date has been fixed on 11.4.2013. On 11.4.2013 the petitioner engaged another Counsel who took adjournment and the case was adjourned fixing 22.4.2013. On 22.4.2013 the contesting respondents filed objection and also filed an application raising objection against maintainability of the second application u/s 34 of the Act. The case was, therefore, adjourned and 15.5.2013 was fixed and thereafter 23.5.2013 was fixed in the case and on that date the case was adjourned and 5.6.2013 was fixed on which date the argument on maintainability of the second application filed by the petitioner was heard. Thereafter 24.6.2013 was fixed for order but on 24.6.2013 a general date was fixed on 18.7.2013. On 18.7.2013 the case was adjourned and 25.7.2013 was fixed. And thereafter the case was adjourned for 25.7.2013 and 8.8.2013 was fixed. On 8.8.2013 the case was adjourned and 14.8.2013 was fixed. On 14.8.2013, 23.8.2013 was fixed. On 9.9.2013 arguments were heard on the maintainability of the second application and thereafter 28.9.2013 was fixed on which date the case was finally decided on merit.

3. The contesting respondents filed a revision (registered as Revision No. 7/15 of 2013) from the aforesaid order. The revision was heard by the Commissioner, who by the impugned order dated 10.3.2014 held that from the order sheet it was clear that the arguments were heard only in respect of the maintainability of the second mutation application filed by the petitioner, however, the case was decided on merit without hearing any arguments on merit in the case. On this finding the matter has been remanded to Tahsildar for deciding the maintainability of second application. In any case, it is found that application filed by the petitioner is maintainable, then after giving opportunity to the parties decide the application afresh on merit. Hence this writ petition has been filed.

4. The Counsel for the petitioner submits that on 27.9.2013 the arguments were not heard regarding maintainability of the application as on 5.6.2013 and 9.9.2013 arguments on the maintainability on the second application had already been heard. On 27.9.2013 the arguments on merit were heard. Therefore, the case was rightly decided on merit by Tahsildar by order dated 28.9.2013. He submits that the Tahsildar in the impugned order relying upon the papers filed before the Consolidation Court as well as Kutumb Register and affidavit of the respondents held that Mata Prasad had only one son. The finding recorded by

Tahsildar in this respect is finding of fact. There is no material to contradict this finding. The contesting respondents in spite of giving the opportunity of evidence in the case by order dated 12.3.2013, could not adduce any evidence and to linger on the proceeding they have deliberately filed an application regarding maintainability of the case and got it adjourned instead of leading evidence. Therefore, in the circumstances, the case was rightly decided on merit and no interference was required by Commissioner in revision in it but the revision was illegally allowed.

5. In reply to the aforesaid arguments the Counsel for the contesting respondents submits that dispute relating to inheritance of Mata Prasad is still pending before the consolidation authority between the parties. After the death of Mata Prasad the petitioner himself substituted the contesting respondents as heirs of Mata Prasad before the Consolidation Officer. Therefore it is admitted by the petitioner that Mata Prasad had four sons and not only one son, Kailash. During the pendency of the dispute relating to inheritance before the consolidation authority no proceeding u/s 34 of Act was maintainable. When the contesting respondents put in appearance before the Tahsildar in the earlier application filed by the petitioner, the petitioner got that application dismissed in default and thereafter another application has been filed behind the back of the petitioner and without issuing any notice or giving any opportunity of hearing the application was allowed by order dated 29.4.2011 and the recall application filed by the petitioner was also rejected by order dated 17.8.2011. However, the orders were set aside by the Commissioner by order dated 12.4.2012 and the matter was remanded to Tahsildar for deciding the case afresh. He submits that second application in proceeding u/s 34 of the Act is not maintainable as such issue relating to inheritance has to be decided by the consolidation authorities and the parties were litigating there. Otherwise also the second application was filed after the earlier application was got dismissed as withdrawn without granting any liberty to file a fresh application, therefore, second application was not maintainable. In such circumstances the contesting respondents have filed objection relating to the maintainability of the second application filed by the petitioners and the arguments were heard on the maintainability of the second application but the Tahsildar has failed to decide the application regarding maintainability of second application u/s 34 of the Act. Therefore, he was hearing the arguments again and again on maintainability of the second application but no argument was heard on merit. The last argument on 27.9.2013 was also heard on maintainability itself and while hearing the arguments on maintainability Tahsildar has illegally decided the case on merit. The respondents have raised objection regarding maintainability, therefore, there was no occasion for the respondents to lead evidence so long as the issue relating to maintainability was decided. In the circumstances, the Commissioner has found that neither evidence has been led by the respondents nor arguments on merit were heard and the matter has been remanded to Tahsildar for deciding the issue relating to maintainability first and thereafter if the second application is

maintainable then after giving opportunity to the parties to lead evidence the case be decided on merit. Since the petitioner has been permitted to raise all the points before Tahsildar no interference is required by this Court.

6. I have considered the arguments of the both the parties. The copies of the order sheets have been filed along with the writ petition. A perusal of the order sheets shows that Tahsildar heard arguments on the maintainability of the second application on various dates and in the mean time fixed dates for delivery of the order but the order regarding maintainability of the application could not be delivered. In such circumstances arguments were heard again on 27.9.2013 and as the issue relating to maintainability had not been decided there was no occasion for him to hear the arguments on merit. The Commissioner found that the arguments were not heard on merit. There is nothing on record to show that the arguments were heard on merit. Therefore, no interference is required by this Court in the finding recorded by the Commissioner.

At present the order of the Commissioner is virtually an order of remand. The petitioner is permitted to raise his grievance before Tahsildar. The writ petition has no merit and it is dismissed.